

AMENDED IN SENATE JULY 15, 2003

AMENDED IN SENATE JUNE 24, 2003

AMENDED IN SENATE JUNE 11, 2003

AMENDED IN ASSEMBLY APRIL 30, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1294**

**Introduced by Assembly Member Wiggins**

February 21, 2003

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An act to add Section 1788.18 to the Civil Code, relating to debt collection.

LEGISLATIVE COUNSEL'S DIGEST

AB 1294, as amended, Wiggins. Debt collectors: responsibilities: identity theft.

Existing law regulates the activities of debt collectors, and prohibits a debt collector from asserting that nonpayment of a consumer debt may result in the seizure or sale of any property or the garnishment or attachment of wages of a debtor, unless that action is in fact contemplated by the debt collector and permitted by law.

This bill would require a debt collector to stop collecting a consumer debt when an alleged debtor provides the debt collector certain information, including, but not limited to, information relating to the alleged debtor's status as a victim of identity theft. This information may also include a specified written statement that certifies that the representations are true, correct, and contain no material omissions of fact. A person submitting the certification who declares as true a

material matter that the person knows to be false would be guilty of a misdemeanor. The bill would permit the debt collector to recommence collection activities only upon a review of certain information and upon the making of a good faith determination, as specified, that the information provided by the debtor does not establish that the debtor is not responsible for the debt. The bill would also require debt collectors to notify consumer credit reporting agencies and creditors of specified information.

~~By authorizing the debtor to submit the written statement described above~~

*Because this bill would make it a misdemeanor for a debtor to include false material in the certification, the bill would create a new crime, thereby imposing a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1788.18 is added to the Civil Code, to
- 2 read:
- 3 1788.18. (a) Upon receipt from a debtor of all of the
- 4 following, a debt collector shall cease collection activities until
- 5 completion of the review provided in subdivision (d):
- 6 (1) A copy of a police report filed by the debtor alleging that
- 7 the debtor is the victim of an identity theft crime, including, but not
- 8 limited to, a violation of Section 530.5 of the Penal Code, for the
- 9 specific debt being collected by the debt collector.
- 10 (2) The debtor's written statement that the debtor claims to be
- 11 the victim of identity theft with respect to the specific debt being
- 12 collected by the debt collector.
- 13 (b) The written statement described in paragraph (2) of
- 14 subdivision (a) shall consist of any of the following:
- 15 (1) A Federal Trade Commission's Affidavit of Identity Theft.



(2) A written statement containing the content of the Identity Theft Victim's Fraudulent Account Information Request offered to the public by the California Office of Privacy Protection.

(3) A written statement that certifies that the representations are true, correct, and contain no material omissions of fact to the best knowledge and belief of the person submitting the certification. A person submitting the certification who declares as true any material matter pursuant to this subdivision that he or she knows to be false is guilty of a misdemeanor. The statement shall contain or be accompanied by, the following, to the extent that an item listed below is relevant to the debtor's allegation of identity theft with respect to the debt in question:

(A) A statement that the debtor is a victim of identity theft.

(B) A copy of the debtor's driver's license or identification card, as issued by the state.

(C) Any other identification document that supports the statement of identity theft.

(D) Specific facts supporting the claim of identity theft, if available.

(E) Any explanation showing that the debtor did not incur the debt.

(F) Any available correspondence disputing the debt after transaction information has been provided to the debtor.

(G) Documentation of the residence of the debtor at the time of the alleged debt. This may include copies of bills and statements, such as utility bills, tax statements, or other statements from businesses sent to the debtor, showing that the debtor lived at another residence at the time the debt was incurred.

(H) A telephone number for contacting the debtor concerning any additional information or questions, or direction that further communications to the debtor be in writing only, with the mailing address specified in the statement.

(I) To the extent the debtor has information concerning who may have incurred the debt, the identification of any person whom the debtor believes is responsible.

(J) An express statement that the debtor did not authorize the use of the debtor's name or personal information for incurring the debt.

(K) *The certification required pursuant to this paragraph shall be sufficient if it is in substantially the following form:*

(Signature)

(e) No inference or presumption that the debt is valid or invalid, or that the debtor is liable or not liable for the debt, shall arise if the debt collector decides after the review described in subdivision (d) to cease or recommence the debt collection activities. The exercise or nonexercise of rights under this section is not a waiver of any other right or defense of the debtor or debt collector.

1 (f) The statement and supporting documents that comply with  
2 subdivision (a) may also satisfy, to the extent those documents  
3 meet the requirements of, the notice requirement of paragraph (5)  
4 of subdivision (c) of Section 1798.93.

5 (g) A debt collector who ceases collection activities under this  
6 section and does not recommence those collection activities, shall  
7 do all of the following:

8 (1) If the debt collector has furnished adverse information to a  
9 consumer credit reporting agency, notify the agency to delete that  
10 information.

11 (2) Notify the creditor that debt collection activities have been  
12 terminated based upon the debtor's claim of identity theft.

13 (h) A debt collector who has possession of documents that the  
14 debtor is entitled to request from a creditor pursuant to Section  
15 530.8 of the Penal Code is authorized to provide those documents  
16 to the debtor.

17 SEC. 2. No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.

